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Attorneys for Plaintiff,

JENNIFER ANICETE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

JENNIFER ANICETE,

Plaintiff,

vs.

NAVIENT SOLUTIONS, LLC,

Defendant.

) **Case No.:**

)

) **COMPLAINT and JURY DEMAND**
) **(Unlawful Debt Collection Practices)**

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COMPLAINT

JENNIFER ANICETE (Plaintiff), by her attorneys, alleges the following
against NAVIENT SOLUTIONS, LLC, (Defendant):

1. Plaintiff brings this action on behalf of herself individually seeking damages
and any other available legal or equitable remedies resulting from the illegal

1 actions of Defendant, in negligently, knowingly, and/or willfully contacting
2 Plaintiff on Plaintiff's cellular telephone in violation of the Telephone
3 Consumer Protection Act (hereinafter "TCPA"), 47 U.S.C. § 227 *et seq* and
4 in violation of California's Rosenthal Fair Debt Collection Practices Act
5 (hereinafter "RFDCPA"), Ca Civ. Code § 1788.17.
6
7

8 JURISDICTION AND VENUE

- 9
- 10 2. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C.
- 11 §227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740
- 12 (2012), holding that federal and state courts have concurrent jurisdiction
- 13 over private suits arising under the TCPA and 28 U.S.C. 1367 grants this
- 14 court supplemental jurisdiction over the state claims contained therein.
- 15
- 16 3. Venue is proper in the United States District Court for the Northern District
- 17 of California pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within
- 18 this District and a substantial part of the events or omissions giving rise to
- 19 the herein claims occurred, or a substantial part of property that is the
- 20 subject of the action is situated within this District.
- 21
- 22
- 23

24 PARTIES

- 25 4. Plaintiff is a natural person residing in Napa County, in the city of American
- 26 Canyon, California.
- 27
- 28

- 1 5. Defendant is a Delaware corporation doing business in the State of
2 California with its principal place of business located in Wilkes-Barre,
3 Pennsylvania.
4
- 5 6. At all times relevant to this Complaint, Defendant has acted through its
6 agents employees, officers, members, directors, heir, successors, assigns,
7 principals, trustees, sureties, subrogees, representatives and insurers.
8

9
10 **FACTUAL ALLEGATIONS**

- 11 7. Defendant is a “person” as defined by 47 U.S.C. § 153 (10).
12
- 13 8. Defendant placed collection calls to Plaintiff seeking and attempting to
14 collect on alleged debts incurred through purchases made on credit issued by
15 Defendant.
16
- 17 9. Defendant placed collection calls to Plaintiff’s cellular telephone at phone
18 number (707) 246-03XX.
19
- 20 10. Defendant places collection calls to Plaintiff from phone numbers including,
21 but not limited to (888) 272-5543.
22
- 23 11. Per its prior business practices, Defendant’s calls were placed with an
24 automated dialing system (“auto-dialer”).
25
- 26 12. Defendant used an “automatic telephone dialing system”, as defined by 47
27 U.S.C. § 227(a) (1) to place its telephone calls to Plaintiff seeking to collect
28 a consumer debt allegedly owed by Plaintiff, JENNIFER ANICETE.

1 13. Defendant's calls constituted calls that were not for emergency purposes as
2 defined by 47 U.S.C. § 227(b)(1)(A).
3

4 14. Defendant never received Plaintiff's "prior express consent" to receive calls
5 using an automatic telephone dialing system or an artificial or prerecorded
6 voice on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).
7

8 15. On August 2, 2016, at or around 12:30 p.m. Pacific Standard Time, Plaintiff
9 called into Defendant's company at phone number (888) 272-5543. Plaintiff
10 spoke with Defendant's female representative ("Alexa") and requested that
11 Defendant cease calling Plaintiff's cellular phone.
12

13
14 16. During the conversation on August 2, 2016, Plaintiff gave Defendant both
15 her phone number and social security number to assist Defendant in
16 accessing her account before asking Defendant to stop calling her cell
17 phone.
18

19
20 17. Plaintiff revoked any consent, explicit, implied, or otherwise, to call her
21 cellular telephone and/or to receive Defendant's calls using an automatic
22 telephone dialing system in her conversation with Defendant's
23 representative on August 2, 2016.
24

25 18. Despite Plaintiff's request to cease, Defendant placed another four (4)
26 collection call to Plaintiff on August 3, 2016.
27
28

1 19. Defendant continued to place collection calls to Plaintiff through January 18,
2 2017.

3
4 20. Despite Plaintiff's request that Defendant cease placing automated collection
5 calls, Defendant placed at least one hundred and fifty-four (154) automated
6 calls to Plaintiff's cell phone.
7

8 **FIRST CAUSE OF ACTION**
9 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**
10 **PROTECTION ACT**
11 **47 U.S.C. § 227**

12 21. Plaintiff repeats and incorporates by reference into this cause of action the
13 allegations set forth above at Paragraphs 1-20.

14 22. The foregoing acts and omissions of Defendant constitute numerous and
15 multiple negligent violations of the TCPA, including but not limited to each
16 and every one of the above cited provisions of 47 U.S.C. § 227 et seq.
17

18 23. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq.,
19 Plaintiff is entitled to an award of \$500.00 in statutory damages, for each
20 and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
21

22 24. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in
23 the future.
24

25
26 ///

27 ///

1 **SECOND CAUSE OF ACTION**
2 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**
3 **CONSUMER PROTECTION ACT**
4 **47 U.S.C. § 227 et. seq.**

5 25. Plaintiff repeats and incorporates by reference into this cause of action the
6 allegations set forth above at Paragraphs 1-24.

7 26. The foregoing acts and omissions of Defendant constitute numerous and
8 multiple knowing and/or willful violations of the TCPA, including but not
9 limited to each and every one of the above cited provisions of 47 U.S.C. §
10 227 et seq.

11 27. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
12 227 et seq., Plaintiff is entitled an award of \$1,500.00 in statutory damages,
13 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47
14 U.S.C. § 227(b)(3)(C).

15 28. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in
16 the future.

17 **THIRD CAUSE OF ACTION**
18 **DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION**
19 **PRACTICES ACT**
20 **CA CIV CODE § 1788.17**

21 29. Plaintiff repeats and incorporates by reference into this cause of action the
22 allegations set forth above at Paragraphs 1-28.

23 30. Defendant violated the RFDCPA based on the following:

- 1 a. Defendant violated the §1788.17 of the RFDCPA by continuously
2 failing to comply with the statutory regulations contained within the
3 FDCPA, 15 U.S.C. § 1692 et seq.
4

5 **PRAYER FOR RELIEF**
6

7 WHEREFORE, Plaintiff, JENNIFER ANICETE, respectfully requests
8 judgment be entered against Defendant, NAVIENT SOLUTIONS, LLC, for the
9 following:
10

11 **FIRST CAUSE OF ACTION**
12

13 31.For statutory damages of \$500.00 multiplied by the number of negligent
14 violations of the TCPA alleged herein (154); \$77,000.00;

15 32.Actual damages and compensatory damages according to proof at time of
16 trial;
17

18 **SECOND CAUSE OF ACTION**
19

20 33.For statutory damages of \$1,500.00 multiplied by the number of knowing
21 and/or willful violations of TCPA alleged herein (154); \$231,000.00;

22 34.Actual damages and compensatory damages according to proof at time of
23 trial;
24

25 **THIRD CAUSE OF ACTION**
26

27 35.Declaratory judgment that Defendant's conduct violated the Rosenthal Fair
28 Debt Collection Practices Act;

- 1 36. Statutory damages of \$1000.00 pursuant to the Rosenthal Fair Debt
2 Collection Practices Act, *Cal. Civ. Code §1788.30(b)*;
3
4 37. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt
5 Collection Practices Act, *Cal. Civ Code § 1788.30(c)*, and;
6
7 38. Actual damages and compensatory damages according to proof at time of
8 trial;

9
10 **ON ALL CAUSES OF ACTION**

- 11 39. Actual damages and compensatory damages according to proof at time of
12 trial;
13
14 40. Costs and reasonable attorneys' fees, and;
15
16 41. Any other relief that this Honorable Court deems appropriate.

17 **JURY TRIAL DEMAND**

- 18 42. Plaintiff demands a jury trial on all issues so triable.

19
20 RESPECTFULLY SUBMITTED,

21 DATED: March 31, 2017

22 **THE LAW OFFICE OF JEFFREY**
23 **LOHMAN, P.C.**

24 By: /s/ Ibrahim Muhtaseb
25 IBRAHIM MUHTASEB

26 Attorney for Plaintiff
27 Email: IbrahimM@jlohman.com
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